

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2012] NZERA Auckland 297
5378259

BETWEEN LYNDSEY CRAIG
Applicant

A N D ST GEORGE
INTERNATIONAL GROUP
LIMITED
Respondent

Member of Authority: Rachel Larmer

Representatives: Mike Treen, Advocate for Applicant
May Moncur, Advocate for Respondent

Investigation meeting: 19 and 20 July 2012 at Auckland

Submissions Received 24 July 2012 from Respondent
30 July 2012 from Applicant
02 August 2012 from Respondent

Date of Determination: 30 August 2012

DETERMINATION OF THE AUTHORITY

- A. Ms Lyndsey Craig's dismissal by St George International Group Limited (St George) was substantively and procedurally unjustified.**
- B. St George is ordered to:**
- (i) Reinstate Ms Craig to an ESOL teaching position on or before 01 October 2012;**
 - (ii) Reimburse Ms Craig for the remuneration she has lost from the date of her dismissal until the date she is reinstated;**
 - (iii) Pay Ms Craig \$5,500 distress compensation.**

Employment relationship problem

[1] Ms Craig commenced employment with St George as an ESOL¹ Teacher in April 2007. Her employment ended on 27 January 2012 on the grounds of redundancy. Ms Craig received two weeks' notice, one of which she worked and the other which she was, at St George's sole initiative, paid in lieu for.

[2] Ms Craig says her dismissal was substantively unjustified and was carried out in a procedurally unfair manner. Ms Craig's main complaints include:

- (a) She was unfairly selected for redundancy because St George did not apply the selection criteria set out in the Collective Agreement (CA);
- (b) She was not redeployed to the vacancy which was created the day after she was given notice of redundancy when another teacher (the person who should have been selected for redundancy under the CA) resigned;
- (c) The Principal's decision to move from his management role into a teaching position made the restructuring process unfair because it reduced the number of teachers St George required. Ms Craig was not told about this key change staffing arrangements;
- (d) On 19 March 2012 St George employed Mr Ian Haley to teach the pre-intermediate class Ms Craig had been teaching at the time of her redundancy. Ms Craig believes Mr Haley is doing her job.

[3] Ms Craig has not obtained permanent employment so she seeks reinstatement, together with monetary remedies.

[4] St George says Ms Craig's redundancy dismissal was justified because student numbers had fallen so it needed to save costs, which it decided to do by disestablishing the two lowest level ESOL classes. It says the selection criteria in the CA did not apply because only the two teachers who taught the two lowest ESOL classes were affected by the restructuring because it was their classes that were disestablished.

[5] St George says it employed Mr Haley on a fixed term agreement which expires on 30 September 2012. It says student numbers recovered so it needed

¹ English for Speakers of Other Languages.

another teacher. It says Mr Haley was the best person for the job and was seen as a stronger candidate than Ms Craig because he was able to teach IELTS.² St George opposes reinstatement on the grounds it is not reasonable or practicable.

Issues

[6] The following issues require determination:

- (a) Was Ms Craig's dismissal substantively justified? In particular:
 - (i) Should Ms Craig have been selected for redundancy?
 - A. Did Mr Moncur's decision to move into a teaching position adversely affect Ms Craig?
 - B. Did St George identify the correct selection pool?
 - C. Did St George apply the selection criteria in the CA?
 - (ii) Should Ms Craig have been redeployed?
 - (iii) Is Mr Haley doing Ms Craig's job?
- (b) Did St George follow a fair and proper process before making Ms Craig redundant? In particular:
 - (i) Did it comply with its statutory good faith obligations?
 - (ii) Did it comply with its contractual obligations under the CA?
 - (iii) Did it comply with the four tests in s.103A(3) of the Employment Relations Act 2000 (the Act)?
- (c) What other factors are appropriate to consider when assessing justification? In particular:
 - (i) Was Ms Craig heard by the decision-maker?
 - (ii) Was Ms Craig's dismissal pre-determined?
- (d) Does s.103A(5) prevent a finding of unjustified dismissal?

² International English Language Testing System.

- (e) If not, what remedies should be awarded?
- (f) Did St George breach its contractual obligation to offer Ms Craig casual work after she was made redundant?
- (g) If so, what if any loss did Ms Craig suffer?

Was Ms Craig's dismissal substantively justified?

Genuine financial difficulties

[7] There is no dispute that since the second half of 2011 St George has experienced financial difficulties. Over the period 10 November 2011 to 10 January 2012 St George tabled five different restructuring proposals which potentially affected ESOL teachers. St George appears to have just dropped the first four restructuring proposals, although that was never expressly communicated to either Unite Union³ or the teachers at the time.

Restructure decision

[8] St George's fifth restructuring proposal was set out in Mr Moncur's letter dated 10 January 2012, which I refer to as *its final proposal*, and it resulted in the redundancies of two ESOL teachers, Ms Craig and Mr Reyes.

[9] These two redundancies occurred because St George decided that from 03 February 2012 it would only offer three ESOL classes, instead of the five ESOL classes previously being taught. St George decided to disestablish the two lowest level ESOL classes so it made Ms Craig and Mr Reyes redundant because they taught these classes.

[10] The decisions to reduce the number of ESOL classes taught, to change the composition of class levels, and to reduce the number of ESOL teaching positions, and therefore the number of teachers employed, are all business decisions that fall within St George's sole management prerogative. Because these were genuine commercial decisions none of them are decisions the Authority is entitled to second guess.

³ All ESOL teachers were members of Unite. St George was required under the CA to consult with potentially affected staff and the union over any restructuring proposals.

[11] However, the way in which these decisions affected Ms Craig's employment is open to scrutiny in accordance with the justification test set out in s.103A of the Act as it applies from 01 April 2011.

[12] When determining substantive justification the Authority must objectively assess whether St George's actions (i.e. its decision to make Ms Craig redundant) was what a fair and reasonable employer could have done in all of the circumstances. The Authority must also objectively assess whether how St George acted (i.e. the manner in which it conducted its restructuring and Ms Craig's redundancy) was what a fair and reasonable employer could have done in all the circumstances at the time Ms Craig was dismissed.

Problems with substantive justification

[13] I find that a fair and reasonable employer in all the circumstances could not have substantively justified making Ms Craig redundant. The five matters which undermine substantive justification include:

- (a) Mr Moncur's unilateral decision to move from his management role into a teaching position reduced the number of teachers St George required from 03 February 2012 and therefore directly resulted in Ms Craig's redundancy. If Mr Moncur had not decided to take on his own ESOL class then Ms Craig would not have been made redundant;
- (b) St George got the selection pool wrong because it did not involve all of the ESOL teachers in the redundancy process. That error resulted in Ms Craig being made redundant when she should not have been;
- (c) St George breached its contractual obligations because it failed to apply the selection criteria in the CA, which would not have resulted in Ms Craig's redundancy;
- (d) St George failed to redeploy Ms Craig during her notice period in breach of its contractual obligation to do so. Had it complied with its contractual redeployment obligations then Ms Craig would not have been made redundant;

- (e) Mr Haley was employed to do Ms Craig's job six weeks after she was dismissed.

Should Ms Craig have been selected for redundancy?

- A. Did Mr Moncur's decision to move into a teaching position adversely affect Ms Craig?

[14] Mr Moncur as Principal of St George had a management, not teaching, position. Although on occasion Mr Moncur would provide cover for teachers who were on leave in order to save St George the cost of a reliever, unlike the ESOL teachers, he did not have responsibility for teaching his own ESOL class.

[15] In January 2012 Mr Moncur unilaterally decided to take responsibility for teaching his own ESOL class. Mr Moncur's decision to move into a teaching position meant St George needed one less ESOL teacher. It was therefore a critical decision which impacted on other ESOL teachers and on the restructuring process because it reduced the number of ESOL teachers St George needed to employ.

[16] Mr Moncur made this key change to ESOL teacher staffing arrangements without consulting Unite or the teachers. He also failed to even inform them of his decision to teach his own class until after the January restructuring process had been completed. By then Ms Craig's employment had ended.

[17] St George's final proposal involved reducing the number of ESOL teachers from five to three. At the time of its final proposal St George employed Mr Reyes, Ms Craig, Ms Hogan, Mr Piacun and Mr Bayldon as ESOL teachers. Mr Piacun resigned in January which should have meant the remaining four ESOL teachers were to compete for the three remaining ESOL teaching positions. In which case only one ESOL teacher would need to be made redundant.

[18] However, that did not occur because Mr Moncur's decision to unilaterally move himself into an ESOL teaching position meant the ESOL teaching pool increased so there were again effectively six ESOL teachers to compete for the three remaining ESOL teaching positions. That was fundamentally unfair because if Mr Moncur had not unilaterally taken on an ESOL teaching position Ms Craig would not have been made redundant.

B. Did St George use the correct selection pool?

[19] All of the ESOL teachers were employed as general ESOL teachers. None of them were employed to teach a particular class or a particular skill level. The evidence clearly established that all of the ESOL teachers had taught different classes over the course of their employment.

[20] Mr Moncur directed which teacher was to teach which level class over which time period. The classes taught by each teacher would change from time to time in accordance with the needs of the business. It was clear that even if a teacher disagreed with Mr Moncur's decision about what class they had to teach,⁴ they were still bound by his management decision and therefore had to comply with his instruction.

[21] St George never undertook a contract variation when it wanted to move a teacher to teach a different class because the level of class each ESOL teacher taught was never a contractual term of their employment. That meant that the selection pool should have consisted of all five ESOL teachers because they were all employed in the same position to do the same job.⁵

[22] I find that St George used the wrong selection pool. It incorrectly proceeded on the basis the selection pool consisted of the two teachers who taught the two lowest level classes, when the selection pool was actually all of the ESOL teachers.

C. Did St George apply the selection criteria in the CA?

[23] Given there were four (or five depending on whether Mr Moncur is included) ESOL teachers for three positions the *last on/first off* contractual selection criteria set out in clause 14(c) and clause 5 of Appendix B in the CA applied. Mr Reyes was first in line for redundancy as the last ESOL teacher to have been employed. Next in line was Mr Piacun who was employed before Ms Craig.

[24] St George breached the CA because it failed to apply the contractual selection criteria. If it had done so then Ms Craig would not have been selected for redundancy.

⁴ Which sometimes occurred.

⁵ I have excluded Mr Moncur from the selection pool because he was in a management position not a teaching position when the final proposal was tabled.

Should Ms Craig have been redeployed?

[25] Notwithstanding the finding that Ms Craig should not have been selected for redundancy, the day after she had been given notice of her redundancy dismissal an ESOL teaching vacancy arose. St George should have but did not redeploy Ms Craig into that vacant position. If it had done so, she would not have been made redundant.

[26] When Mr Piacun found out Ms Craig had been given notice of redundancy he resigned. Mr Piacun believed he was next in line for redundancy under the CA because he had been employed before Ms Craig. He also had secondary employment so thought he was better placed to be made redundant than Ms Craig. Mr Piacun informed Mr Moncur he was resigning to help Ms Craig retain her position.

[27] The situation at the time of Mr Piacun's resignation was that St George had decided to implement its final proposal. It had disestablished the two lowest level ESOL classes and had given Mr Reyes and Ms Craig notice of termination on the grounds of redundancy.

[28] Because two ESOL teaching positions had already been disestablished, Mr Piacun's resignation affected a third ESOL teaching position. I find that was outside the scope of St George's final proposal which had only proposed disestablishing two ESOL positions. Mr Piacun's resignation therefore created a vacant ESOL teaching position. This vacant position arose the day after Ms Craig had been given notice of redundancy so she was still employed. Under clause 4 of Appendix B in the CA Ms Craig was entitled to request redeployment into that vacant position.

[29] I do not accept St George's evidence that Mr Piacun's resignation did not create a vacancy because it decided to disestablish his position as well. A proposed decision to disestablish a third ESOL teaching position was a further restructuring which required consultation in accordance with clause 14 and Appendix B of the CA. That never occurred.

[30] I find St George failed to meet its redeployment obligations to Ms Craig. It should have withdrawn her notice of termination and redeployed her into the vacant ESOL position which was created when Mr Piacun resigned.

Is Mr Haley doing Ms Craig's job?

[31] Mr Haley teaches Pre-Intermediate, the same class Ms Craig taught before her dismissal. Mr Haley is using the same course materials, he has many of the same students, he is giving the same tests/exams, and he is teaching at the same level. This evidence suggests on the balance of probabilities that Mr Haley is doing Ms Craig's job.

[32] I consider St George's decision to employ Mr Haley into Ms Craig's job just six weeks after she was dismissed undermines the substantive justification of her redundancy.

Did St George follow a fair and proper process before making Ms Craig redundant?

[33] When dismissing an employee, a fair and reasonable employer would comply with:

- (a) Its statutory good faith obligations⁶;
- (b) Its contractual obligations⁷;
- (c) The four tests in s.103A(3) of the Act⁸.

Did St George comply with its good faith obligations?

[34] St George had an obligation under s.4(1)(b) of the Act not to do anything to mislead, or which was likely to mislead, Ms Craig. It was also required under s.4(1A)(c) of the Act to provide Ms Craig with access to information relevant to the continuation of her employment⁹ and an opportunity to comment on that information before she was made redundant.¹⁰

[35] I find St George breached the good faith obligations set out above because it mislead Ms Craig about the restructuring. St George also failed to provide her with information, or give her an opportunity to comment on information, relevant to the continuation of her employment, namely:

⁶ *Simpson Farms Limited v Aberhart* [2006] ERNZ 825.

⁷ *ADHB v X* [2007] ERNZ 66.

⁸ *Angus & McKean v Ports of Auckland* [2011] NZEmpC 160.

⁹ Section 4(1A)(c)(i) ERA.

¹⁰ Section 4(1A)(c)(ii) ERA.

- (a) That Mr Moncur resigned as Principal on 05 January 2012;
- (b) Mr Moncur's decision to move into an ESOL teaching position;
- (c) The level of cost savings St George wanted to achieve by the restructure;
- (d) That St George decided it wanted to employ an ESOL teacher who could teach IELTS and that it did not believe Ms Craig had the ability to do so;
- (e) Why she had been selected for redundancy;
- (f) Why St George did not consider the selection criteria in the CA applied;
- (g) Why St George declined to redeploy her after Mr Piacun resigned.

[36] The failure to explain what cost savings were being sought meant that Ms Craig¹¹ came up with a proposal¹² which would have achieved the same level of cost savings St George had been seeking in December 2011.

[37] Mr Moncur told me Ms Craig's proposal was rejected because it did not save enough. He accepts that was not communicated to Ms Craig at the time and that no response to the counterproposal was given. Ms Craig was therefore deprived of an opportunity to address the issue of cost savings or the adequacy of the savings she had proposed before she was dismissed.

[38] During the Authority's investigation Mr Moncur put a very strong emphasis on St George's desire to attract IELTS students. His evidence was that Ms Craig *would not be attractive to IELTS's students*. He said Mr Haley was seen as a stronger candidate than Ms Craig for employment because he had recent IELTS teaching experience.

¹¹ Together with Unite and other ESOL teachers (excluding Mr Moncur because no-one knew he had moved into an ESOL teaching position).

¹² That each ESOL teacher gave up one day of work a fortnight, so they all worked 9 days a fortnight until 07 February 2012 to save costs until student numbers increased as January was known to be the quietest months for St George. This counterproposal allowed immediate savings to be achieved.

[39] I find Mr Moncur's evidence on the IELTS issue unsatisfactory and I do not accept it. Ms Craig had been specifically employed to teach IELTS, as specified in her original individual employment agreements. She had also provided relief teaching of IELTS at St George and at other institutions since her redundancy. The evidence suggested she may have had more recent IELTS teaching experience than Mr Haley.

[40] I accept the evidence given by Ms Craig and her ESOL teaching colleagues that she could easily have taught IELTS if need be. Her core skills involved teaching and her training and experience meant she could apply those skills to whatever level class she had to teach.

Did St George comply with its contractual obligations?

[41] St George breached clause 14(c) and clause 5 in Appendix B of the CA because it failed to apply the *last on/first off* selection criteria. It also breached clause 4 of Appendix B because it failed to redeploy Ms Craig into Mr Piacun's vacant position.

Did St George comply with the four tests in s.103A(3) of the Act?

[42] I find St George is unable to meet three of the four tests in s.103A(3) of the Act. It did not raise its concerns because it failed to make it clear to the ESOL teachers what it was proposing to do or why. This meant staff did not have a reasonable opportunity to respond to the restructuring proposal. When Ms Craig tabled a counterproposal to save redundancies St George did not respond to it, which suggests her *explanation* (response) was not genuinely considered.

What other factors should be considered when assessing justification?

[43] Under s.103A(4) of the Act the Authority may consider other appropriate factors when assessing justification, namely whether Ms Craig was heard by the decision-maker and whether or not her dismissal was predetermined.

Was Ms Craig heard by the decision-maker?

[44] Until Mr Moncur gave evidence during the Authority's investigation it appeared he had been responsible for the restructuring proposal, he had been the person who consulted with the teachers, and he had been the decision-maker.

However, Mr Moncur made it absolutely clear to the Authority that he was merely following instructions from the St George directors.

[45] Mr Moncur explained he did not have any financial information, he was not aware of the level of cost savings being sought, or what savings would be achieved if the final proposal was adopted, or even what student numbers were predicated for 2012.¹³ He also said he did not know how much Ms Craig's counterproposal would have saved St George.

[46] Mr Moncur said he did not come up with the restructuring proposal, apart from signing letters he had no power in respect of the restructuring process, and he was not the decision-maker. He saw himself as merely a conduit of information between the directors and the teachers. I find that was not made clear to Ms Craig or her union at the time.

[47] Ms Craig had no opportunity to be heard by the actual decision-maker before she was dismissed. That was unfair because if she had been given that opportunity it is likely the decision-maker could have explained the proposal¹⁴ and could have given feedback on the counterproposal. The actual decision maker would also have been well placed to have addressed issues which resulted in Ms Craig being treated unfairly, such as the failure to apply the selection criteria in the CA and the failure to redeploy her.

Was Ms Craig's dismissal pre-determined?

[48] I consider on the balance of probabilities that Ms Craig's redundancy was pre-determined.

[49] St George sent its final proposal to only two of the five ESOL teachers. The failure to include other potentially affected ESOL teachers in the restructuring process suggests a decision had already been made to make Mr Reyes and Ms Craig redundant. They were also the only two teachers made redundant.

[50] Mr Moncur told me that one of the directors had said at the outset that the two lowest classes had to go. He also initially said the director told him to make Mr Reyes and Ms Craig redundant but he later changed his evidence and said he was

¹³ Information about predicted student numbers had been circulated in December but Mr Moncur appeared to be unaware of that information.

¹⁴ Because it was their proposal.

not sure if they were specifically named or if they were just identified as the teachers of the two lowest level classes who would not be needed.

Does s.103A(5) prevent a finding of unjustified dismissal?

[51] Section 103A(5) of the Act prevents the Authority from determining a dismissal is unjustified solely because of minor process defects which did not result in unfairness to the employee. That restriction does not apply in this case because the process defects were serious, fundamental, pervasive, and resulted in Ms Craig's dismissal in circumstances where a fair and reasonable employer could not have dismissed her.

Findings

[52] St George breached its statutory good faith obligations. It breached its contractual obligations. It did not comply with the s.103A(3) tests which set out minimum standards of natural justice and procedural fairness. Ms Craig was not given an opportunity to be heard by the decision-maker who decided to dismiss her. Her redundancy was also pre-determined.

[53] I find that Ms Craig should never have been selected for redundancy. Although Ms Craig was given notice of termination, that should have been withdrawn and she should have been redeployed into Mr Piacun's vacant position when he resigned.

[54] I consider St George's actions (i.e. its decision to make Ms Craig redundant) and how St George acted (i.e. the way it went about its restructuring process) were not what a fair and reasonable employer could have done in all the circumstances. I find Ms Craig's dismissal was substantively and procedurally unjustified.

What remedies should be awarded?

Did Ms Craig contribute to the situation that gave rise to her dismissal grievance?

[55] Having found Ms Craig has a dismissal grievance, s.124 of the Act requires me to consider the extent to which her actions contributed towards the situation that gave rise to her personal grievance, and if required, reduce remedies accordingly. I find Ms Craig did not engage in any blameworthy conduct requiring a reduction in remedies.

Should Ms Craig be reinstated?

[56] Since 01 April 2011 reinstatement has no longer been the primary remedy, it is merely one of the remedies available. Under s.125 of the Act the Authority may order reinstatement if it considers it *practicable and reasonable to do so*.

[57] I consider it is reasonable and practicable to return Ms Craig to the workplace. There are currently four teachers teaching four classes (elementary, pre-intermediate, intermediate and upper-intermediate). Two of those teachers, Mr Haley and Ms Nimfal Bastida, are on fixed term employment agreements which expire on 30 September 2012.

[58] Mr Haley is teaching the same class Ms Craig did when she was dismissed. I therefore consider she would be able to slot back into her former job easily. I can see no reasonable or practicable impediments in her doing so.

[59] Before her dismissal in January Ms Craig had been employed by St George since May 2007. She said she enjoyed teaching there. It was clear that she was well liked and strongly supported by her ESOL teacher colleagues.

[60] Ms Craig has actively sought work but has only obtained casual relief work so far. I accept Ms Craig's evidence that the current job market is such that it is hard to obtain full time permanent employment as an ESOL teacher. Ms Craig should not have been dismissed so I consider it fair and reasonable to reinstate her.

[61] St George is ordered to reinstate Ms Craig on or before 01 October 2012. The delay between the issuing of this determination and Ms Craig's reinstatement date to gives St George an opportunity to plan for Ms Craig's orderly return to work. The delay also avoids further disruption to students because there is no need for Mr Haley or Ms Bastida to be dismissed before their fixed term engagements expire on 30 September merely to accommodate Ms Craig's reinstatement.

Did Ms Craig mitigate her loss?

[62] I am satisfied Ms Craig took reasonable and appropriate steps to mitigate her loss. Whilst she has not obtained permanent work she has undertaken various short term casual/reliever engagements for different language schools.

Should Ms Craig be awarded lost remuneration?

[63] If St George had followed a fair and proper process then Ms Craig would not have been made redundant. She is therefore entitled to an award of lost remuneration.

[64] I am satisfied Ms Craig has lost more than three months' remuneration as a result of her dismissal grievance and that it is appropriate to compensate her under s.128(3) of the Act for her actual loss. Ms Craig is therefore awarded compensation under s.128(3) of the Act for her actual lost remuneration from the date of dismissal until the date of her reinstatement.

[65] Because reinstatement has been delayed until 01 October, I consider it appropriate to award Ms Craig her lost remuneration until she actually returns to work. Ms Craig is reminded of her obligation to continue to attempt to mitigate her loss between now and the date of her reinstatement.

[66] I do not have sufficient evidence to enable me to calculate Ms Craig's actual lost remuneration. The parties are therefore required to attempt to agree on this amount themselves. If they are unable to do so then either party may apply to the Authority to fix that amount.

What distress compensation should be awarded?

[67] I accept Ms Craig's evidence that she was distressed and embarrassed about her dismissal. She felt that she had been personally targeted because of the support she gave a former employee who had been unjustifiably dismissed by St George. That view appeared to have some merit.

[68] Ms Craig undertook some casual relieving work¹⁵ at St George after her redundancy which caused students to ask her why she could not continue teaching them. She told me she found these sorts of questions embarrassing and humiliating.

[69] I consider an award of distress compensation of \$5,500 is appropriate to compensate Ms Craig for the hurt, humiliation, and distress she suffered as a result of her unjustified dismissal.

¹⁵ As per clause clause 14(d) of the CA.

Did St George breach its contractual obligation to offer Ms Craig casual work after she was made redundant?

[70] Clause 14(d) of the CA states:

In the case of a member made redundant the employer shall, for a period of 12 months from the date of the redundancy, offer that person or persons any casual work that may become available for which he or she is qualified and skilled.

[71] St George admits it decided not to offer Ms Craig any more casual work after she raised her personal grievance because it believed in doing so she had *frustrated their contract*. It also relies on its concern Ms Craig breached confidentiality by retaining a document relevant to her dismissal grievance case which she had found on the photocopier and by giving evidence to the Authority about a conversation she heard Mr Moncur having with Mr Haley which she believed supported her personal grievance case.

[72] I find that St George breached its contractual obligations by unilaterally deciding not to offer Ms Craig any more casual work. If it had concerns about her conduct whilst undertaking casual relief work then it should have raised those with her at the time. Those concerns were raised for the first time in the course of the Authority's investigation.

[73] I also find that Ms Craig's raising of a dismissal grievance does not permit St George to breach its contractual obligation under clause 14(d) of the CA.

[74] I do not accept Ms Craig was seeking out confidential information or eavesdropping on Mr Moncur. The alleged confidential document was left lying around on the photocopier which undermines St George's claim that it was confidential. Ms Craig could not reasonably be expected to ignore documentation she believed was relevant to her grievance.

[75] I do not consider Ms Craig was eavesdropping as St George alleged. Ms Craig was present when Mr Moncur spoke to Mr Haley, she did not attempt to hide her presence, but merely heard it as she went about her normal business. Mr Moncur could have conducted his conversation in private if he did not want to be overheard, but he chose not to.

What loss did Ms Craig suffer as a result of the breach of contract?

[76] I find that Ms Craig has not suffered any loss as a result of the breach of contract because I have awarded her full lost remuneration from the date of dismissal to the date of reinstatement. That award will cover the days on which she should have been offered casual work by St George but was not.

Summary

[77] Ms Craig's dismissal on the grounds of redundancy was substantively and procedurally unjustified.

[78] St George is ordered to:

- (a) Reinstatement Ms Craig to an ESOL teaching position by no later than 01 October 2012;
- (b) Reimburse Ms Craig under s.128(3) of the Act for the remuneration she has lost from the date of her dismissal until the date she is reinstated;
- (c) Pay Ms Craig \$5,500 under s.123(1)(c)(i) of the Act as compensation for the humiliation, loss of dignity, and injury to feelings she has suffered as a result of her unjustified dismissal.

Costs

[79] Ms Craig as the successful party is entitled to a contribution to her actual costs, provided she has incurred any. The parties are encouraged to agree costs themselves. If they are unable to do so, Ms Craig has 14 days within which to file a costs memorandum, and St George has 14 days within which to reply. This timetable will be strictly enforced.

[80] Proof that costs have actually been incurred will be required in support of a costs application. In order to assist the parties with their costs negotiations I can indicate the Authority is likely to adopt its usual tariff based approach to costs. The notional daily tariff is currently \$3,500 which will then be adjusted to reflect the particular circumstances of this case.

Rachel Larmer
Member of the Employment Relations Authority